97-1343

Supreme Court, U.S.
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UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

On Petition for a Writ of Certiorari To the United States Court of Appeals, Third Circuit

PETITIONERS REPLY BRIEF TO DEFENDANTS EAST LYCOMING SCHOOL DISTRICT & ROBIN SCHULLER

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INTRODUCTION

Plaintiffs bring to the Court's attention that the named Respondents on Defendants' (i.e., Schuller & East Lycoming School District) cover page are incorrect; Respondent "Third Circuit" should be listed. Plaintiffs also bring to the Court's attention that Defendants' counsel, Anthony R. Sherr, is not currently certified to practice before the Bar pursuant to Supreme Court Rules 5 and 9, and will not be licensed to practice until after this Court has heard the briefs in this action. The Clerk's office, in direct contradiction to the Rules and Admittance office, has returned Plaintiffs' Motion to Strike the aforementioned Brief, even though it complied with the Supreme Court Rules of Procedure.

In response to Defendants' statements that Plaintiffs have not complied with the rules **(brief p. 1)**, If Plaintiffs Petition was not filed in a timely fashion, the Clerk's office would have returned the Petition. Plaintiffs timely filed their Petition in keeping with the Rules.

PLAINTIFFS' COUNTERSTATEMENT

Plaintiffs agree they received said letter from Defendant Schuller. Yet the letter never stated **(brief p. 2)** that Plaintiffs were in violation of the Pennsylvania Compulsory School Attendance statute. Schuller specifically stated it had come to the District's attention that the Plaintiffs allegedly had

> "three school aged children . . subject to . . the Public School Code"

and that there was no record of the children being "registered". To further correct the Defendants' statements, Mr. Lawvere met with Robin Schuller who stated she did not have authority to make decisions and that Mr. Lawvere would have to meet with Superintendent Harrington.

Plaintiffs did not "fail" to comply with state statutes as alleged **(brief p. 2)**; Plaintiffs were not and are not residents of the District, nor were or are they subject to any compulsory attendance statute. Even if Plaintiffs were subject to said statute, they could not have violated the Pennsylvania School Code since they did not violate the implemented and promulgated rules and regulations since none exist pertaining to home schooling or for any alleged criminal fines and penalties. U.S. vs. Reinis, 794 F.2d 506, 508 (9th Cir 1986); 45 P.S. 1208; 1102, 1206, Laws of Pennsylvania.

On October 6, 1994, Schuller, with full support and approval of the District and Superintendent Harrington, filed a private criminal complaint with the District Magistrate in violation of state statute, rules, and procedures outside the scope of her office (Petition for Writ of Certiorari, p.7, {3}), without approval from the District Attorney's office. Monroe v. Pape, 365 U.S. 167 (1961), Pennsylvania Rules of Criminal Procedure, Rule 106. Schuller later stated under oath that the complaint was filed without any "personal knowledge" of violations by Plaintiffs of the Pennsylvania School Code **(brief p. 3).**

Plaintiffs pled "non assumpsit" upon receiving a letter from Pennsylvania State Constable Larry Peterman threatening their arrest. Magistrate McRae's clerk refused to accept this plea. As noted on the record, Plaintiffs were forced to plea "not guilty" under coercion, duress, and threat of incarceration. **(brief p. 3, {1}).** Plaintiffs were never duly served process.

Plaintiffs were also denied the right to conduct discovery by Magistrate McRae and Defendant's **acting public** attorney J. Howard Langdon refused to answer Plaintiffs discovery requests. McRae also denied Plaintiffs access to court files

and told them to "subpoena" them. Plaintiffs could not examine the files for more than one year.

In granting summary judgment to the Defendants, Judge Muir decided "issues of fact", an act he is not permitted to do. National Surety Co. v. First National Bank of Indiana, 106 F.Supp. 302. Judge Muir stated that the:

> "liability of a governmental agency . . may not be proven under the respondeat superior doctrine, but must be found upon evidence . . . that the unit itself supported a violation of constitutional rights."

Muir stated that Plaintiffs "cited no evidence" of unconstitutional policy, not as alleged . . "a complete lack of evidence." **(brief p. 4)**. Regarding Schuller the Court also never stated there was a "complete lack of evidence".

Plaintiffs remaining claims were not under state law as alleged **(brief p. 4)**, but secured under the 1st and 5th Articles of the Bill of Rights to have access to information and due process. Goodwin v. Cross Co. School District (1973 Ed Ark) 394 F. Supp 417.

Judge Muir in his order of March 19, 1997, failed to address any of the new evidence incorporated with and attached to Plaintiffs' Motion for Rehearing. Defendants are attempting to mislead the court. Said Motion contained, including but not limited to, an eyewitness account of the assault upon Brenda Lawvere and her children; evidence that the School District waived its right to file a complaint even if Plaintiffs were subject; and procedural deficiencies that violated Plaintiffs rights to due process **(brief p. 5)**. The evidence further supported Plaintiffs claims and proved genuine issues of fact existed.

Plaintiffs appealed the District Court's order to the Third Circuit. Upon filing their Brief, Plaintiffs became aware of irregularities in the Court docket. The clerk's office notably gave legal advice to the Defendants; excused late filings; corrected and bound some of the Defendants' briefs; failed to timely file Plaintiffs' Briefs and ignored Plaintiffs' motions and pleadings. Once again Plaintiffs were held to a higher unknown standard and denied due process. Even Plaintiffs' Petition for Rehearing was treated as one "en banc" even though not requested, over and above Plaintiffs objections. Plaintiffs then appealed.

ARGUMENT

In response to Defendants' argument, Plaintiffs not only contend but maintain that not only were their numerous rights violated by the Defendants under color of law, some of whom are policymakers, Plaintiffs were also denied due process and equal access to the courts **(brief p. 6 {2}).**

Plaintiffs object to Defendants' statements on **page 6** in the **brief.** The Court never stated there were "no genuine issues" of material fact in dispute. In fact, evidence on the record proved otherwise. Plaintiffs also object to counsel's statements that the Third Circuit's decision does not conflict with other decisions.

A. Plaintiffs agree with Defendants' legal argument **(brief p. 7).** Further, **F.R.C.P. Rule 56(c)** states that judgment should be rendered only if:

> "the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."

Further in response, summary judgment should not have been granted, since Defendants failed to submit any affidavits in their defense; refused to timely answer interrogatories under oath; hindered the deposition of at least one witness; refused to produce documents; and submitted unsigned pleadings, all in violation of the Rules of Court and Plaintiffs' rights. Documentation on the record proved genuine issues of material fact did exist, which is why the case was set for trial.

B. In response to Defendant's Brief **(p. 8 {1})** it is axiomatic that a public school district is not a municipality within the meaning of the term, but is a quasi corporation acting as an agent of the state to manage the public school system. Therefore Monell does not apply. Monell v. New York City, Dept. of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.
In the event this Court finds Monell does apply, please take note that the unconstitutional actions by Defendant Schuller, under color of law, which violated Plaintiffs rights, were approved of and sanctioned by Superintendent Harrington and the School District. Schuller did not act alone.

The issue of unconstitutional custom and policy was raised for the first time by Defendant District in their Motion for Summary Judgment, which Plaintiffs' rebutted. The Court never took into account the sworn testimony of Defendant Schuller who stated she had no personal knowledge of any violations, or the testimony of School Board President DeWire who stated there was no home school policy, or Superintendent Harrington who testified that Schuller did not have authority to file a Criminal Complaint even though compelled to file by the District and Harrington.

In response to Defendants' **(brief, p. 9-10),** Plaintiffs are not lawyers and object to counsel's statements that their Petition

is "unclear", or that their hard work and legal research is "misplaced or inappropriate". Plaintiffs expected professionalism from counsel, not petty comments about quality of Plaintiffs" Petition. Plaintiffs also object to statements that they allegedly "failed" to "Identify" relevant evidence regarding unconstitutional custom and policy.

Plaintiffs object to counsel's statements about a scrivener's error on **Bowen v. Watkins**, 669 F.2d 979 (1982), **(brief p. 10)**. As this Court is well aware, this case deals with issues of civil rights and municipal liability and therefore is directly related to this action.

C. In response to Defendants' statements **(brief p. 13-14)**, Plaintiffs state that when Schuller violated their rights, she, with alleged approval of the School District, violated clearly established statutory and constitutional rights, including but not limited to Plaintiffs right to have due process and the right to have access to information to prepare a defense. Therefore, Schuller is without qualified immunity. James v. Ogilvie, (1970 ND Ill) 310 F.Supp 661, 663; Harlow v. Fitzgerald, 457 U.S. 800, 818 102 S.Ct. 2727, 2738 (1982).

Schuller admitted she had no authority; admitted she had no personal knowledge of a violation, and that she didn't even know if Plaintiffs even had children; also admitted she had insufficient knowledge to make a determination to file; and that she filed without approval of the District Attorney's office in violation of state law, rules, and procedures.

Plaintiffs agree that Judge Muir should have examined the conduct of each Defendant that claimed qualified immunity and failed to do so. Neither Judge Muir, nor the Third Circuit, examined "detailed factual descriptions" of each Defendants' actions thus prejudicing the Plaintiffs' case.

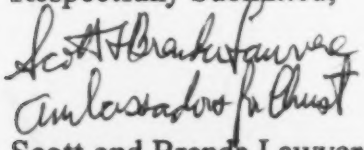
It was the Courts' duty to "be watchful" of Plaintiffs constitutional rights to prevent encroachment and they were not. Boyd v. U.S., 116 U.S. 635.

There is no doubt genuine issues of material fact were in dispute, that Judge Muir prejudiced Plaintiffs' case by failing to timely rule on Motions and failing to require Defendants to comply with the Rules of Court and answer Plaintiffs discovery requests. The Third Circuit also prejudiced Plaintiffs by holding them to a higher standard and not giving them equal access to the courts and due process of law.

CONCLUSION

WHEREFORE, based upon the foregoing, Plaintiffs renew their argument in support of their Petition for Writ of Certiorari to issue to the Third Circuit.

Respectfully Submitted,



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